IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2172 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ANAND REGIONAL COOP. OIL SEEDSGROWERS' UNION LTD.

Versus

MUKESH AMRUTLAL SARAIYA

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Appearance:

1. Criminal Misc.Application No. 2172 of 1994

MR DC DAVE for Petitioner No. 1-2

PARTY-IN-PERSON for Petitioner No. 3

RULE SERVED for Respondent No. 1

MR LR PUJARI, APP for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/11/2003

ORAL JUDGEMENT

1. This application has been filed by the applicants seeking order regarding quashing of the proceedings of Criminal Case No. 2419 of 1994. The said Criminal Case is filed in the Court of the learned Judicial Magistrate First Class at Anand under the provisions of sections 7 and 16 of the Prevention of Food Adulteration Act (for short 'the Act').

1.1. It is alleged in the complaint that opponent no. 1 - the Food Inspector then attached to the office of the Assistant Commissioner, Food & Drug Control at Nadiad, while on his usual round on 16th January, 1992 visited the premises of the applicant no. 1. At that time the Deputy Manager (Production) Mr. D.M. Tiwari and other responsible persons along with applicant no. 1 were present. The Food Inspector revealed his identity and gave notice in accordance with rule 12 of the Prevention of Food Adulteration Rules (for short 'the PFA Rules') expressing his desire to purchase a sample from the imported refined rapeseed oil barrel. The Food Inspector had suspicion that water was stored in the said barrels. He, therefore, asked aforesaid persons to sell a sample from one of the barrels to him. However, Mr. Tiwari declined to sell the sample and accept the amount offered by the Food Inspector towards purchase price. The Food Inspector, therefore, collected a sample on his own from the barrel and filled it in the clean utensil which was subsequently filled in three glass bottles which were transparent, clean and moistureless. He thereafter packed the samples in accordance with rules 14 and 15 of the PFA Rules and after completion of the procedure, despatched one sample to the laboratory at Baroda for analysis and two samples to the Local Health Authority at Nadiad. The sample was analysed by the Public Analyst and the report was forwarded by him to the Food Inspector which indicated that the sample was adulterated one. The Food Inspector thereafter obtained the consent u/S. 20 of the Local Health Authority for filing prosecution against the present applicants and on 2nd April, 1994 he filed the complaint, which came to be numbered as Criminal case No. 2419 of 1994. It is this proceedings which is sought to be quashed by the applicants by filing this application u/S. 482 of the Code of Criminal Procedure.

2. Mr. D.C. Dave, learned advocate for the applicants has submitted that there is no case made out under the provisions of the Act by the Food Inspector in as much as the complaint itself shows that the Deputy Manager (Production) Mr. Tiwari had not sold the sample

to the Food Inspector. He further submits that the water filled barrels were the Muddamal of a Criminal Case which was filed on behalf of the applicant no. 1 against M/s. Kailash Roadways on 16th January, 1992, because the rapeseed oil which was imported by applicant no. 1 was pilfered in transit and in place of oil the barrels were filled in with water. It was these barrels which were kept outside the said godown. Obviously there was no oil for selling, stored in those barrels. He has further submitted that when there is not an iota of allegation in the complaint to the effect that the offending article was meant for sale, no offence under the Act could be said to have been committed by the applicants.

2.1. As against that, Mr. L.R. Pujari, Ld. APP has vehemently opposed this application and has sought that ultimately all these questions can be examined at the trial and the proceedings are not required to be quashed by this Court by exercising powers under Section 482 of the Code of Criminal Procedure.

3. Having gone through the record of the application and having considered the submissions of the learned counsels for the respective parties, it is very clear that the Food Inspector on 16th January, 1992 visited the premises of the applicant no. 1 and found some barrels containing water. He, therefore, expressed his desire to purchase a sample from it. However, the Deputy Manager (Production) Mr. Tiwari declined to sell the sample and even accept the money which was offered towards purchase price of the sample by the Food Inspector. This fact is emerging from the complaint itself. The applicants have also annexed complaint which has been filed by them against M/s. Kailash Roadways for the pilferage of rapeseed oil in transit. Said oil was imported by the applicant no. 1 and it was being transported from Kandala to Anand. It appears that though the complaint filed on behalf of applicant no. 1 is also dated 16th January, 1992, it appears that it is filed earlier in point of time than the visit of the Food Inspector. Since from the complaint it transpires that even the Food Inspector was informed about the pilferage when he visited the premises of applicant no. 1. When there is no material to show even prima-facie that the offending article was meant for sale, it cannot be said that there is any offence committed by the accused under the provisions of the Act. In the complaint, as stated earlier, there is not a single allegation to this effect. Not only that but the complaint even lends some support to the fact that the barrels were stored by them as Muddamal of the complaint which was filed on behalf of

applicant no. 1 against M/s. Kailash Roadways. Thus, even prima-facie there is no material on record to show that the applicants have committed any offence punishable under the provisions of the Act. It is a well settled law that when the chances of the complaint resulting into conviction are absolutely bleak, there is no point in allowing the trial to proceed. Hence, in my opinion, in light of the aforesaid discussion, even if the trial is allowed to take place, there is no chance of the applicants being convicted for any offence under the provisions of the Act. It is, therefore, just and proper that this Court exercises jurisdiction under Section 482 of the Code of Criminal Procedure and quash the proceedings of Criminal Case No. 2419 of 1994. It is hereby ordered that the proceedings of Criminal Case No. 2419 of 1994 pending on the file of Judicial Magistrate First Class at Anand are quashed. Rule is made absolute.

[ AKSHAY H. MEHTA, J.]

* Pansala.